IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

VINCENT KHOURY TYLOR and VINCENT SCOTT TYLOR, Plaintiffs, vs. MARRIOTT INTERNATIONAL, INC., a Delaware Corporation, dba COURTYARD BY MARRIOTT WAIKIKI BEACH AND/OR COURTYARD WAIKIKI BEACH; JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; AND DOES ASSOCIATIONS 1-10, Defendants.	)	CIVIL NO. 14-00069JMS-RLP Honolulu, Hawaii October 7, 2014 2:34 p.m. [33] PLAINTIFF'S MOTION TO DEFER OR DENY DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE J. MICHAEL SEABRIGHT,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs:

J. STEPHEN STREET, ESQ.
Attorney at Law
134 Maono Place
Honolulu, Hawaii 96821

PAUL MAKI, ESQ.
Attorney At Law
888 Mililani Street, 8th Floor
Honolulu, Hawaii 96813

DANE ANDERSON, ESQ.
Attorney At Law, LLLC
P.O. Box #1621
Honolulu, Hawaii 96806

APPEARANCES (Cont'd.):

For Defendant Marriott International, Inc.:	LOUISE K. Y. ING, ESQ. GLENN T. MELCHINGER, ESQ. Alston Hunt Floyd & Ing 1001 Bishop Street, Suite 1800 Honolulu, Hawaii 96813
Official Court Reporter:	Cynthia Fazio, RMR, CRR United States District Court P.O. Box 50131 Honolulu, Hawaii 96850

Proceedings recorded by machine shorthand, transcript produced with computer-aided transcription (CAT).

TUESDAY, OCTOBER 7, 2014 2:34 P.M.

THE CLERK: Civil 14-69JMS-RLP, Vincent Khoury Tylor versus Marriott International, Inc. This case is called for Plaintiff's Motion to Defer or Deny Defendant's Motion for Partial Summary Judgment.

Counsel, your appearances for the record, please?

MR. STREET: Good afternoon, Your Honor. Steven Street, Paul Maki and Dane Anderson for the plaintiffs.

THE COURT: Yes.

MR. MELCHINGER: Good afternoon, Your Honor. Glenn Melchinger and Louise Ing on behalf of the defendant.

THE COURT: All right, yes, thank you.

All right, Mr. Street, do you have anything to add to your moving papers?

MR. STREET: Well, Your Honor, we'd at least like to address some of the things that were said in Mr. --

THE COURT: All right. Fair enough.

MR. STREET: -- Melchinger's affidavit.

THE COURT: Sure.

MR. STREET: Fundamentally the declaration left out a really important part of our discussions, and that was the commitment on their part that when we reached an impasse in settlement discussions, which I guess we did by August 15th, that they would stipulate for leave to bring in who they claimed was the real party in interest, the franchisee. And our discussions from that point forward were continuing to stall on his part as to whether they were going to stipulate to it or make me file a motion for leave to bring them in.

And the discovery that we wanted to do waited on that party being part of the case because they continually said they couldn't get information out of their franchisee and they had been stymied along the way in getting this information and that we were going to need to bring them in as a formal party in the case before we initiated discovery.

THE COURT: All right. Thank you.

MR. STREET: Thank you.

THE COURT: Do you have anything to add?

MR. MELCHINGER: I would say in response to that, that I do not particularly recall having a specific objection to, and also -- let me start this way: There was a point at which we specifically had a conversation and I said that I was not able to get a specific response, and that may have been around mid-August. And certainly Mr. Street, if he needed to go ahead and do whatever he needed to do, should do that.

But none of that changes the fact that the elements that plaintiffs have put forth in their declaration as part of a 56(d) motion do not contain anything that's central to resolving the Motion for Summary Judgment. So...

THE COURT: All right. All right. Thank you.

All right. I am going to grant the motion. The reality is I think for me to reach the same conclusion that Marriott reaches would require me to essentially be ready to rule on the motion now and I'm just not going to do that and I can't do that. I think, you know, the standard is lower than -- than Marriott would have me apply here, especially when there's been no discovery at all. So I am going to permit some discovery to go forward. And so what we need to talk about now is sort of timing and what that would do to Marriott's motion. You know, if you want to just leave it as is or withdraw it, obviously without prejudice and then you could refile by just a single page saying you're essentially refiling and incorporating those document numbers, or you can add something new if you think that might be relevant after that discovery period, which, you know, may be the case that you feel you want to add something in that you didn't have before.

So I think the best thing is to withdraw it without prejudice. We'll talk about a schedule and set a full briefing schedule then as well as try to do an expedited discovery schedule.

MR. MELCHINGER: I understand.

THE COURT: Does that sound agreeable or would you rather leave your motion as is?

MR. MELCHINGER: I will have to confer with my co-counsel on whether they want to add or do anything else in response. I think the motion is a very narrow legal issue and probably does not need much more, if anything.

So, if the Court is suggesting that we should withdraw it or --

THE COURT: Well, I can deem it moot. I can deem it withdrawn without you agreeing to it at this point in time. I mean, it's sort of form over substance in some way because what I'd do is give you an option of either a one-page statement saying we're reaffirming the motion, in which case it's no work on your part other than, you know, that one sheet.

MR. MELCHINGER: Right.

THE COURT: Or you could refile if you think some new things should be added. What I don't want is some sort of, you know, we want to add these facts to the previous motion. If you want to add something by way of argument or facts based on the discovery that is done, then you file an entirely new motion.

MR. MELCHINGER: In that sense -- I'm sorry, I don't want to --

THE COURT: But if you're happy to stand on what you've done, then you can just file a statement essentially of refiling docket number 37 -- I'm sorry, whatever the docket number is, not 37 -- and all of the concise statements, so forth, that goes with it.

MR. MELCHINGER: I understand. If I might ask -- excuse me -- for point of clarification, is the Court allowing then all this discovery to go forward or is that something that we have to work out as we go --

THE COURT: Yeah, I mean I'm not -- that's the next question I have, is what discovery is necessary. And I don't know if you folks can reach agreement or not, but the question would be what discovery is necessary to get to the summary judgment motion. Because that's what this is about. This is a 56(d) motion. So the discovery that would be permitted is the discovery that's been set forth that's relevant in the plaintiff's view to putting forth a meaningful opposition to the summary judgment motion. So, do you have a time frame in mind, Mr. Street, at this point?

MR. STREET: Well, my -- my time frame was to have at least 4 months. I mean given the time that the -- you know, given the fact that the holidays are coming up and so forth, and I'm anticipating having trouble deposing some of the witnesses and so forth that we might need to depose during that period of time.

MR. MELCHINGER: I'm not sure 4 months for what exactly? The only pending request right now are Rule 34 requests against Marriott in docket number 38 filed the other day, was an opposition to a Motion to Amend.

THE COURT: Let me ask you this: When do you have the hearing before the magistrate judge on the Motion to Amend?

MR. STREET: It's a non-hearing motion. They filed their opposition yesterday.

MR. MELCHINGER: Yesterday.

MR. STREET: And we have an opportunity to file a reply within 14 days.

THE COURT: Okay. All right.

MR. STREET: We may be able to file it earlier than that. But --

THE COURT: Let me say two things to help you to the extent I can. I'm not sure we're going to have firm resolution of this.

One, my view is Mr. Street has filed a motion under Rule 56(d) saying I need X discovery. My view is the discovery shouldn't be broader than that. I mean you set forth what you need to oppose the Motion for Summary Judgment. So this isn't just opening up to any discovery. For purposes of this motion at least it's not that, to get this motion on track.

Exactly what form that would take, I'm not prepared to say because I just don't know at this point in time. So I think you should meet and confer and see if you can agree. If you can't, get before Judge Puglisi as soon as possible and try to get some help in defining the contours of that -- of that discovery.

If you want to do that, I can not reset this Motion for Summary Judgment right now but give you folks maybe a month to work through that full schedule and then if you want to call

Ms. Passamaneck, my law clerk, because she'll be familiar with this, and if you have joint dates where you can agree on, then to file a motion, opposition, reply and hearing date.

MR. STREET: Okay.

THE COURT: I can try to get you into that puka. In other words I can try to preset that so that you won't be in the queue when you refile the motion. Does that make sense?

MR. STREET: Sounds fair enough to me, Your Honor.

THE COURT: Okay?

MS. ING: Your Honor, about how much lead time do you need, you know, how far ahead are you anticipating that we could get a motion set, just for our planning purposes?

THE COURT: Well, I mean we're doing pretty well right now. So I mean right now I'm not setting that far out. So if you can try to reach some arrangement of how much time is necessary in the scope of this discovery so that you know when a new motion could be filed or when an opposition could be filed, after having completed the discovery. What I'm saying is we can get those dates set and the hearing date.

MS. ING: Okay.

THE COURT: Okay? So I don't think it'll be a problem getting those dates as long as I'm in town and don't have something else set at the present time. But in other words, if you say it's going to take 3 months to complete discovery, let's say, through the end of the year, then you could have a date in January to file a motion, you know, late January for the opp. and we could set a hearing date now for a date in February sometime. That's the sort of thing I'm talking about. So that you won't just file the motion later and then you will be in queue and maybe we couldn't set it until March or April.

MR. MELCHINGER: I understand that. I appreciate it. I thank the Court for its indulgence there or accommodation. I think we will want to -- I think we can work out or try to work these issues out in front of the magistrate, but we will be obviously seeking some representation Mr. Street is going to, you know, proceed with alacrity on whatever it is that he wants to do.

THE COURT: Mr. Street, I'm warning you now, yes, I mean delay is not going to be taken -- looked at kindly going forward. You're going to have to work to get this discovery done in an expedited fashion.

MR. STREET: Now, Your Honor, what about this issue though of the franchisee who they can't get the information from who needs to be a party to this case?

THE COURT: Well, that's why maybe it makes sense for you folks to contact Judge Puglisi, sit down with him, let him know where things stand so he knows he needs to get that order out one way or another and then you can start to figure out the scope of the discovery at that point in time.

MR. MELCHINGER: All right. And as of the filing yesterday there is an affidavit on file which sets out the name of the assignee of the RP/LCPB entity that we gave you before. So there's that entity name that's out there already. And there is, you know, a Rule 45. So, you know, whether or not somebody is a party at this point is not an impediment to proceeding with discovery, you know, I don't think either.

THE COURT: Well, so if you're telling Mr. Street here's where you can go to get some discovery, then you need to look at that, Mr. Street, and see if you can --

MR. MELCHINGER: And we can --

THE COURT: You may not be able to do all your discovery with that information.

MR. STREET: Yeah, except until they're parties to the case they're not subject to normal discovery responses.

THE COURT: Well, their --

MR. STREET: Take depositions I suppose, but --

THE COURT: Right. I mean you can do some things and you can start arranging those things, it seems to me. You may not be able to do everything.

MR. MELCHINGER: And Marriott is, you know, willing to work and accommodate expeditiously these things.

THE COURT: All right. So I'm going to deem the Motion for Summary Judgment withdrawn, I guess, based on my ruling without prejudice, clearly without prejudice. I will give you permission when the time comes to either, one, set a refiling, essentially, which would be incorporating the motion and the corresponding concise statement and so forth, or refiling a motion in its entirety. Okay? If you refile in its entirety I'm going to ignore everything previously. If you ask me to just incorporate the old paperwork, I'll just incorporate the entirety of that old paperwork.

MR. MELCHINGER: Understood.

THE COURT: Okay? And you'll work toward, see if you can reach some consensus getting together with Judge Puglisi, coming up with a time frame and the appropriate discovery that needs to be done and try to reach a consensus then on when a new motion can be filed, opposition, reply and hearing date. Okay?

Obviously giving the Court enough time after the reply to be prepared for the hearing. Okay. You can kind of look at the local rules for that timing as far as the timing between the motion and the opposition, reply and the hearing.

THE LAW CLERK: 5 weeks.

THE COURT: Ms. Ing, you have something?

MS. ING: Oh, no, no, I was just nodding in agreement.

THE COURT: Oh, okay. Okay. Is everything clear? Mr. Street, any questions?

MR. STREET: No. I -- I think we're fine, Your Honor.

MS. ING: I think our concern, Your Honor, is just to make sure that if -- since this is being put off that we do have an agreed plan on going forward --

THE COURT: Well, that's why I want you to meet and confer and try to get that plan. If you can't, that's what the magistrate judge is there for.

MS. ING: So I think your statements are helpful that, you know, you're expecting that that discovery aimed at the MPSJ defendants be expeditious and without --

THE COURT: Right. And that takes some work on your side too. I mean if Mr. Street wants to do some depositions, you need to work to try to get people available and get these depositions done.

MR. MELCHINGER: I think we have a path. Thank you.

THE COURT: Okay. Okay.

MR. STREET: Thank you, Your Honor.

THE COURT: Thank you.

(The proceedings concluded at 2:47 p.m., October 7, 2014.)

COURT REPORTER'S CERTIFICATE

I, CYNTHIA FAZIO, Official Court Reporter, United States District Court, District of Hawaii, do hereby certify that pursuant to 28 U.S.C. §753 the foregoing pages is a complete, true, and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United Stated.

DATED at Honolulu, Hawaii, October 29, 2014.

/s/ Cynthia Fazio

CYNTHIA FAZIO, RMR, CRR